



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. N. J. Dartez, Secretary
State Board of Barber Examiners
Austin, Texas

Dear Sir:

Opinion No. O-1359
Re: Deficiency appropriation by 46th
Legislature for State Board of Bar-
ber Examiners, traveling expenses.

This will acknowledge receipt of your letter of
August 28, 1939.

The following state of facts is taken from your
letter:

During the year 1937, Governor Allred issued to
the State Board of Barber Examiners a deficiency appro-
priation in the amount of \$600.00 for Board members' travel
expenses. In 1939, the 46th Legislature, in passing a
deficiency appropriation bill, appropriated the sum of
\$600.00 to cover said authorization for deficiency expen-
diture given by the Governor. Following the passage of
this deficiency bill, the Comptroller's Department has
set aside from the present balance in the Barber Fund, a
special fund, the sum of \$600.00 to cover the deficiency
appropriation. To date \$302.50 of the outstanding \$600.00
has been presented for payment to the Comptroller and
Treasurer, and there is a balance in the Treasury of
\$297.50 of the amount set aside for the Comptroller to pay
the deficiency.

On this state of facts, you desire the opinion
of this department on the following questions:

"(1) If this Department should file claims
for salaries and other expenses incurred during
this fiscal year against said amount of \$297.50
prior to the receipt of the balance of the de-
ficiency claims by the Comptroller, can the Com-
ptroller approve these claims to be paid out of
this remaining balance?

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"(2) Inasmuch as this obligation was incurred during the fiscal year 1936-37 and appropriated during the year 1938-39, said appropriation bill not mentioning when or from what funds it should be paid, can the balance of this deficiency claim be paid from the revenue received by this Department during the fiscal year 1939-40?"

The deficiency bill of the 46th Legislature, above referred to, appropriates "out of moneys in the State Treasury not otherwise appropriated to pay the deficiency granted by the Governor," "Barber Examiners -- Travel Expenses -- \$600.00"

All fees and other receipts collected by the State Barber Board and deposited in the State Board of Barber Examiner's Fund, during and for the fiscal years ending August 31, 1938, and August 31, 1939, less transfers to the General Fund as provided by statute and the appropriation bill, together with any balances on hand, were appropriated in the Departmental Appropriation Bill of the 45th Legislature, Regular Session, for the payment of various expenditures for salaries and other expenses itemized and authorized therein in the total sum of \$62,420.00 for each year of the biennium.

Your letter states that your Department has not spent its entire appropriation for the biennium, but has merely exhausted its cash balance.

Since the \$297.50 cash balance in the State Board of Barber Examiners Fund, set aside by the Comptroller to pay the deficiency appropriation, had already been "otherwise appropriated" by the 45th Legislature for the payment of certain current expenses of the Department for the biennium of 1937-39, the Comptroller should not have set aside this \$297.50 for the payment of the deficiency appropriation, but should approve valid claims for current expenses within the appropriation made by the 45th Legislature during the biennium of 1937-39, to be paid out of this remaining balance.

Answering your second question, you are advised that, in view of consistent Legislative practice to direct that appropriations shall be paid out of designated special funds when intending that this shall be the manner and method of payment, and to direct payment out of the General

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Revenue Fund by use of the words "appropriated out of any moneys in the State Treasury not otherwise appropriated," this deficiency appropriation is to be regarded as a direction to pay out of the General Revenue Fund, and there is no legislative authority for its payment out of special funds.

Trusting that this sufficiently answers your inquiry, we beg to remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *R. W. Fairchild*
R. W. Fairchild
Assistant

RWF:pbp

APPROVED SEP 13, 1939

Gracie B. Mann
ATTORNEY GENERAL OF TEXAS

